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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

CASE NO. 20-md-02924-ROSENBERG

IN RE: ZANTAC (RANITIDINE) .
PRODUCTS LIABILITY . West Palm Beach, FL
LITIGATION. . March 4, 2021

DISCOVERY HEARING (through Zoom)
BEFORE THE HONORABLE BRUCE REINHART
UNITED STATES MAGISTRATE JUDGE

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1 *THE COURT:* Good afternoon, everybody. I know we were
2 a little late getting the room open. That was my fault, so i
3 apologize for that.

4 Let's go on the record and get started. This is Case
5 Number 20-2924, In Re: Ranitidine Multi District Litigation.
6 This is the continuation of a discovery hearing that we started
7 last week relating to multiple issues attendant to the
8 30(b)(6) notices for deposition served on what we are calling
9 the generic Defendants.

10 First of all, let me remind the parties, please, as
11 quickly as you can, file the submissions that you submitted the
12 other day. We are going to do a brief written order, but I
13 want to reference those materials in my order, and I can't
14 reference them until they have a docket number. So, if you
15 could just get those filed, even if it is just the unsealed
16 ones, just get the submissions themselves, and if you
17 subsequently want to file the attachments, that is fine, you
18 can file those separately. I would like to get that off the
19 docket -- on the docket and off my plate.

20 Second, let me just remind everyone again, whenever
21 you speak please identify yourself for the Court Reporter.

22 I have a third, and I should know the answer to this,
23 but I will ask again, Ms. Finken, how many generic Defendants
24 are left in this case? I know we had 23 at one point. One of
25 the submissions seemed to suggest 21, but I thought the other

1 day someone said 22. If you can help me out on that.

2 *MS. FINKEN:* Your honor, I believe presently there are
3 22 families of generic Defendants, but my understanding is that
4 there is discussion regarding one of those being dismissed. It
5 should be 21, would be an accurate number, I believe.

6 *THE COURT:* When I looked at your submission and you
7 had listed who had responded to things and who had not, there
8 were only 21. I wanted to be sure I had the right count.

9 *MS. FINKEN:* That is correct, your Honor.

10 *THE COURT:* Okay. Let me sort of frame the issues
11 that I see and give you some perspective and then we will
12 address the specific issues that you have raised in your
13 materials.

14 I understand on at least one, maybe more of those
15 issues, the request of the Court today is not to rule on
16 anything, but to give you a little more time to finish the
17 process. I am inclined to do that, but I did want to talk
18 about it a little bit.

19 Let me start with this. I hope everyone saw the order
20 that Judge Rosenberg entered about an hour ago at Docket Entry
21 2930. If you haven't seen it, I can read it to you.

22 Ms. Finken, have you seen it?

23 *MS. FINKEN:* I have, your Honor. Thank you.

24 *THE COURT:* Mr. Henry, have you seen it?

25 *MR. HENRY:* I have, your Honor. Thanks.

1 *THE COURT:* I think you should assume that the message
2 that is being sent is that Judge Rosenberg is not satisfied
3 that the parties are managing this deposition process
4 efficiently and orderly. More specifically, PTO 60 requires
5 that storage and transportation 30(b)(6) depositions will occur
6 in April, so we will be starting those depositions in the next
7 30 to 45 days. Today is March 4th, April 1st is 28 days away.

8 Custodial productions need to occur sufficiently in
9 advance of the depositions to allow for meaningful preparation.
10 We can't do custodial production until we have an ESI
11 protocol and yet, as I sit here today, my understanding, and we
12 will flesh this out, is we do not have an agreed ESI protocol,
13 we have not begin custodial production, and we do not have
14 tentative dates for all the depositions.

15 The reality is, within the next ten to 20 days one or
16 more of these Defendants is going to have to make and complete
17 a custodial production to allow for the depositions that are
18 going to occur in early April. That is not a lot of time.

19 The concern is that these deposition notices were
20 formally served as of February 9th, but were in the possession
21 of these Defendants in January, six weeks ago. So, to be where
22 we are today, given where we started six weeks ago, does not
23 give the Court great confidence, and that is why Judge
24 Rosenberg has entered the order.

25 I intend to fully utilize the authority that she has

1 given me to right this ship, get it back on the rails and get
2 these depositions done as contemplated in PTO 60 because those
3 deadlines will not change. Those depositions are going to
4 occur as required in the timeframe set by PTO 60.

5 Also, and we can talk about this further, my
6 presumption in my default position is there will not be more
7 than two depositions on any given day. There are enough days
8 so the depositions do not have to be stacked with six, or
9 seven, or five depositions on the same day. Two a day should
10 be more than sufficient to get all the depositions taken that
11 need to be taken.

12 You can agree to more than two if you want to, but I
13 am telling you what the Court's presumption is.

14 Let me turn to the specific issues that have been
15 raised by the parties' submissions. Let me start with this.
16 PTO 54 had three deadlines as of February 28th. We were
17 supposed to, by the end of February 28th, have an agreement on
18 search terms, the Defendants were supposed to identify and
19 propose their initial custodians, and the Defendants were
20 supposed to propose tentative -- that's the word in the
21 order -- tentative deposition dates.

22 Let me take them in that order. Ms. Finken, was there
23 by close of business on February 28th, an agreement on search
24 terms?

25 *MS. FINKEN:* Your Honor, if I can phone in a friend on

1 this. Ms. Luhana has been handling that aspect of it and she
2 is here and can talk to that issue.

3 *THE COURT:* Very well. Thank you. Ms. Luhana.

4 *MS. LUHANA:* Good afternoon, your Honor, Roopal Luhana
5 for the Plaintiffs.

6 Judge, I appreciate what you said earlier because the
7 parties appeared before your Honor and Judge Rosenberg on
8 February 5th, and the same issue was posed, whether the generic
9 Defendants would take the route of search terms or whether they
10 would take the route of TAR and cull the production to produce
11 custodial files.

12 So, that question was posed, they were unable to
13 answer it. They asked for additional information to make that
14 decision, but you have to appreciate in terms of most cases,
15 Defendants don't get the benefit of that information earlier
16 on, however, we obliged. We met and conferred, we narrowed the
17 search terms and we were hopeful that Defendants would be able
18 to give us their decision on whether they were going to use
19 search terms or use TAR and culling.

20 To this date, they still haven't provided that
21 information. Most of the generic Defendants haven't given that
22 answer to us. That is why we have requested in our submission
23 specifically for the generic Defendants to provide an answer by
24 the close of business tomorrow, and if they were unable to come
25 to an agreement, that we appear before the Court on Monday.

1 *THE COURT:* Okay. I appreciate that. You actually
2 got ahead of me there. That is an issue we are going to
3 address in a second. I appreciate that.

4 The question I was asking is a more straightforward
5 one. As I recall the conversations we had, whether they went
6 the search term route or the TAR route, there had to be an
7 agreement on some initial search terms to allow the process to
8 begin, because even if they opted for TAR, TAR is an iterative
9 process which requires some initial terms for searching.

10 So, I think that is why -- I know that is why, in PTO
11 54 Judge Rosenberg ordered the parties to agree on initial
12 search terms by February 28th. My question was just a yes or
13 no, did you make that deadline or not?

14 *MS. LUHANA:* We made the deadline to come to an
15 agreement on a narrowed set of search terms to use for linear
16 review, not a set of search terms to use if there is a TAR
17 protocol in place.

18 *THE COURT:* All right. I will accept that you all
19 made the deadline. All right. Close enough, good enough. We
20 can address the TAR issues -- it's my understanding we are not
21 going to address those today, that the request is to let you
22 all have a little more time to work that through and work with
23 the special master, so I'm inclined to do that.

24 The second deadline was that the Defendants were
25 supposed to propose initial custodians by February 28th. Mr.

1 Henry, did that occur?

2 MR. HENRY: It did, your Honor.

3 THE COURT: As to all 21 of the Defendants?

4 MR. HENRY: I believe it occurred -- I believe 19 of
5 the 21 made their disclosures, and since Sunday night, the last
6 two have made their disclosures to my understanding.

7 THE COURT: Who are the two who didn't make the
8 deadline?

9 MR. HENRY: I believe it was Novitium and Nostrum.
10 Ms. Finken can correct me if I'm wrong.

11 THE COURT: Ms. Finken, do you know were the two that
12 didn't make the deadline?

13 MS. FINKEN: Mr. Henry is correct, it was Novitium and
14 Nostrum.

15 THE COURT: When did they comply?

16 MS. FINKEN: One complied on Monday, and the other
17 complied on Tuesday.

18 THE COURT: Okay, that is fine. Okay. As we stand
19 here today, you have that information now, Ms. Finken?

20 MS. FINKEN: Yes.

21 THE COURT: Let's turn to the third issue. PTO 54
22 required the Defendants to offer up tentative deposition dates.
23 It is my understanding that has not happened, is that correct;
24 Mr. Henry?

25 MR. HENRY: I'm sorry, your Honor?

1 *THE COURT:* Let me put it this way. In the
2 Plaintiffs' submission they represent that 21 -- I am sorry, 19
3 of the Defendants did not meet the February 28th deadline to
4 give them deposition dates for the 30(b)(6) depositions that
5 were required under PTO 54. I am just asking you if you
6 dispute that.

7 *MR. HENRY:* Your Honor, the deposition dates were
8 given, I think the dispute is over whether a manufacturing
9 witness was identified in those disclosures.

10 *THE COURT:* Your position is dates were given, but
11 just not an identity of a witness?

12 *MR. HENRY:* No, your Honor, let me be specific. We
13 were required to give deposition dates for a pharmacovigilance
14 witness, storage and transport witness, and a manufacturing
15 witness, and several parties, my client, Apotex, being one, did
16 not identify a manufacturing witness.

17 *THE COURT:* I understand that, but you and I are
18 talking past each other. You are talking about the identity of
19 the witness. I am asking you, did you give Ms. Finken a date
20 for your client to sit for a manufacturing deposition?

21 *MR. HENRY:* No, your Honor.

22 *THE COURT:* Do you dispute that in fact, as Ms. Finken
23 represents in her submission, 19 of the generic Defendants did
24 not comply with PTO 54 by providing dates for a manufacturing
25 depo, a storage and transport depo, and a PV depo?

1 *MR. HENRY:* Your Honor, I don't have the number of
2 Defendants that did not identify a date for each of those
3 categories.

4 *THE COURT:* Okay. The further representation is, that
5 as we sit here today, four days past the deadline, the Court
6 ordered deadline, eight of the Defendants have still not
7 provided deposition dates; is that correct?

8 *MR. HENRY:* That may be correct, your Honor. Some of
9 those communications are happening directly with Ms. Finken, so
10 I am not in on all of those communications.

11 *THE COURT:* Okay.

12 *MS. FINKEN:* Your Honor, can I respond to that?

13 *THE COURT:* Yes. I read your submission, but yes, you
14 may.

15 *MS. FINKEN:* There were eight that didn't give
16 manufacturing dates, there were two that did not give any dates
17 for shipping and storage, pharmacovigilance, or manufacturing
18 at all.

19 *THE COURT:* As we sit here today?

20 *MS. FINKEN:* Correct.

21 *THE COURT:* I think your representation in your motion
22 was that Teva and -- I'm sorry, I don't remember who the other
23 one was -- did timely give you dates for all three, and nobody
24 else did; is that correct?

25 *MS. FINKEN:* No, your Honor, that is not correct, and

1 I apologize if it was unclear in my submission.

2 There were a number of Defendants that gave us dates
3 on Sunday as they were required to do. The order requested
4 that people start giving dates as early as possible so that we
5 could get them set on the calendar.

6 The only two that gave dates prior to this weekend was
7 Teva and Apotex. Other than that, everyone else waited until
8 the final deadline to provide dates.

9 *THE COURT:* I thought I saw in your submission that
10 some of them had provided dates on Monday and Tuesday.

11 *MS. FINKEN:* Yes, the two that we just spoke about,
12 Novitium and Nostrum, gave dates Monday and Tuesday.

13 *THE COURT:* But the other eight have still not given
14 you dates; is that correct?

15 *MS. FINKEN:* They did not give dates for manufacturing
16 at all, and then there were two that did not give dates at all
17 for any depositions.

18 *THE COURT:* Mr. Henry, as to those ten, I am going to
19 issue an order to show cause why they shouldn't be sanctioned
20 for not complying with PTO 54, and you will have an opportunity
21 to answer for that.

22 *MR. HENRY:* Are we going to be heard on that today?

23 *THE COURT:* No, I am going to issue an order to show
24 cause, I am going to allow everyone to brief it, and then we
25 will have a hearing.

1 *MR. HENRY:* Yes, your Honor.

2 *THE COURT:* It seems to me when a District Court
3 orders someone to do something, and they don't do it, the Court
4 cannot let that slide.

5 All you were ordered to do was to produce a date.
6 That is all you were ordered to do, give a tentative date. If
7 you didn't do it, you didn't comply with the order, and we will
8 have a hearing to determine what sanctions, if any, should be
9 imposed for that.

10 *MR. HENRY:* Understood, your Honor.

11 *THE COURT:* Okay. Now, I understand with regard to
12 the manufacturing depositions, however, there is a substantive issue,
13 and I will get to that in a second.

14 Ms. Finken, at least with regard to the scheduling of
15 those depositions and getting the dates that you need so those
16 depositions can go forward in April, how do you propose that we
17 proceed?

18 *MS. FINKEN:* Your Honor, since we gave our submission
19 yesterday there were -- several people have reached out to try
20 to reschedule and move their dates around so that they did not
21 conflict, which we have been working through that.

22 My proposal would be to allow us to continue to work
23 through getting that scheduled by the close of business
24 tomorrow, and if we cannot with certain Defendants, that we
25 issue an order of scheduling on their behalf.

1 I can submit an updated calendar for your Honor as an
2 exhibit tomorrow if that's your preference.

3 *THE COURT:* First of all, Mr. Henry, any objection to
4 not addressing that today and giving the parties some more time
5 to work it out?

6 *MR. HENRY:* No, your Honor. I would like to clarify
7 that from Monday through today, and I expect into tomorrow, the
8 Defendants have been working with the Plaintiffs to reschedule
9 those depositions. I would also like to point out that PTO 60
10 gives the parties until Friday to make those adjustments.

11 So, I would suggest that at the close of business
12 Friday, if the parties have still not come to agreement, that
13 at that time, the meet and confer process should take over so
14 the remaining Defendants that don't have the right depositions
15 could work with Ms. Finken to find the right date, because when
16 we are talking about 61 depositions or more, with 21 different
17 Defendants, that is not a very simple process.

18 We don't even think there is a dispute until the close
19 of business on Friday.

20 *THE COURT:* Okay. You can't reset a date that you
21 haven't set in the first place. Let's start with that. For
22 example, as to your client in manufacturing, you are not
23 resetting a date, you are setting a date.

24 *MR. HENRY:* Understood, your Honor.

25 *THE COURT:* Okay. Let's just be clear about that.

1 Secondly, I have no problem letting the process play
2 its way out, but here is what I am going to do.

3 I will give you until the close of business tomorrow
4 to see what you can do. If you want some time for the meet and
5 conferral process, I will give you until close of business on
6 Monday for that. I will accept Ms. Finken's proposal.

7 At five o'clock on Monday, Ms. Finken, submit a notice
8 of what is still left to be resolved, which the Defendants have
9 not come to agreement with the Plaintiffs, and I will set a
10 hearing at which I will require the individual lawyers for
11 those individual Defendants to appear. I will hear them and
12 then I will order the depositions, and that hearing may occur
13 as early as Tuesday.

14 I want the parties to be clear, I have cleared my
15 calendar Tuesday, Wednesday, other than our discovery status
16 conference, and Thursday. We are going to get these
17 depositions scheduled next week.

18 *MS. FINKEN:* Thank you, your Honor.

19 *THE COURT:* That is how we will proceed.

20 Let's talk about the substantive issue that I think is
21 on the table. Mr. Henry, I will let you go first on this
22 because I think this is your issue. As I understand it from
23 what I am reading, your position is we don't -- I'll
24 paraphrase, we don't manufacture, so we shouldn't have to sit
25 for a manufacturing depo, at a very broad level, but I want to

1 give you a chance to flesh that out.

2 *MR. HENRY:* Yes, your Honor, and thank you for hearing
3 us on this issue. It is important to my client and to several
4 of the non-manufacturing Defendants, obviously. I would like
5 to frame it this way: This isn't about scope, relevancy, or
6 proportionality, and it is not about whether there are topics
7 that a manufacturing witness could or couldn't answer. We
8 covered those issues on Tuesday.

9 Our concern is about producing a manufacturing witness
10 when the Defendant does not manufacture either API or finished
11 drug product. Right. So, I see my burden today to demonstrate
12 to the Court that causing a non-manufacturing Defendant to
13 produce a witness on manufacturing would have the potential of
14 causing annoyance, embarrassment, or undue burden and expense.

15 So, that is what we want.

16 *THE COURT:* Okay.

17 *MR. HENRY:* In order to produce that witness, I have
18 to first find, or more appropriately, Apotex has to find a
19 witness and has to pick somebody when they don't have a
20 manufacturing function.

21 Then the second part of that is, I have to educate
22 that person on a function that the company doesn't do. Under
23 the Court's rubric that we talked about on Tuesday, that
24 witness could appear and simply say Apotex Corp doesn't
25 manufacture, we don't have information related to that topic.

1 We could go down through the 43 topics and we could be done in
2 20 minutes. Right. That is not a heavy lift, but that is not
3 where we are.

4 Or we could do the PTO 30(b)(6) process of meeting and
5 conferring and the Plaintiffs could see that we don't
6 manufacture and we could not go through a deposition, but
7 again, that is not where we are.

8 If we simply were to present a witness to do that
9 20-minute deposition, I think the Court is right that that
10 wouldn't be a huge burden, but that is not what Plaintiffs
11 want. How do we know that?

12 Well, number one, the Plaintiffs rejected that idea;
13 and the second one is, the Plaintiffs will not allow us to
14 present a witness on two topics on the same day. For example,
15 I think PAI presented that option this morning to the
16 Plaintiffs and said, can I present my pharmacovigilance and
17 manufacturing witness on the same day, with the assumption that
18 the manufacturing part would be 20 minutes. Well, the
19 Plaintiffs rejected that.

20 We certainly don't think the Plaintiffs are trying to
21 clog up the system, which we all know is going to be difficult
22 to work out, with 20-minute depositions because that doesn't
23 make a lot of sense.

24 So, what is this about? Remember Ms. Finken's
25 discussion on Tuesday about the manufacturing issue being at

1 the heart of what their theory is about the degradation of the
2 molecule, different manufacturing processes for API are
3 important, different processes can affect the degradation
4 rates, mechanisms of action reporting, testing, quality
5 control. All of those issues are at the heart of what they
6 want, but how can they dig into those when we don't
7 manufacture?

8 Well, this is how. Many of the non-manufacturing
9 generic Defendants hold ANDAs, the abbreviated new drug
10 application, that the FDA uses to approve a drug to be
11 marketed.

12 Now, I will represent to the Court that Apotex holds
13 four of those, four ANDAs going back to 1997. Apotex U.S. did
14 not prepare those ANDAs, but it does hold those ANDAs, and
15 those ANDAs do describe how the drug is manufactured because
16 that is what an ANDA is required to do under the FDCA.

17 Now, I also don't know why all of the
18 non-manufacturing Defendants may or may not hold ANDAs, but I
19 can tell the Court that Apotex holds its ANDA because it has
20 regulatory obligations for the drugs it is marketing in the
21 United States, and it makes periodic reports under the FDCA and
22 regulations, and it has routine correspondence with the FDA, so
23 it has to have those ANDAs.

24 So, what's the burden to me, Apotex, to produce a
25 witness? Well, first, as I said, we have to find somebody.

1 Now, Apotex has to select who it wants to speak on its behalf
2 for manufacturing when it doesn't manufacture. Most likely it
3 is going to pick a regulatory person because the ANDA file
4 itself sits in regulatory. Right.

5 Then, to prepare that witness they have to review the
6 four ANDA files, again, going back to 1997. They have to
7 understand what is in those ANDAs and, since this is a
8 manufacturing deposition, they have to look and see what those
9 ANDAs say about manufacturing. That is over 30,000 pages of
10 documents the witness has to become familiar with. That is not
11 a casual afternoon, that is days of review and research that
12 that witness is taken away from his position.

13 Now, if we were a manufacturer, I could go to the vice
14 president of manufacturing and much of this stuff would be
15 right in his head. That is not what we have here. That is
16 just to have them familiar with what is in the ANDA.

17 Now, after reviewing those documents, of course, they
18 have to sit with me and prepare for the deposition and then sit
19 for the deposition itself, again, for something we don't do.

20 Now, the ANDAs do have detailed information about
21 manufacturing. For example, they talk about an agitated thin
22 film evaporator, or they use acronyms like NMSM, or interim
23 chemical formulations like Christopher crude or Christopher
24 pure. That is all great for somebody who knows what
25 manufacturing is, but a person who sits in regulatory doesn't

1 know what those terms mean. That is outside of what Apotex
2 Corp does.

3 So, other than knowing what is in the document and
4 being able to read the document, that witness provides no value
5 to understanding manufacturing, and we would go through an
6 undue burden and expense to prepare that witness for little
7 value.

8 So, in our view, we see that deposition going one of
9 three ways. The first way it could go is, Apotex's witness
10 appears and they read from the ANDAs. Right. That is a
11 tremendous burden and expense to prepare a witness and clog up
12 a deposition schedule for what the Court has recognized is of
13 suspect value to have a witness just read old documents.

14 The second way it could go is that the Plaintiffs are
15 going to be dissatisfied with the amount of information they
16 get from this witness and petition the Court, a PTO 32
17 submission, and we will be back here with the Plaintiff asking
18 for another day of deposition with a different witness that
19 knows more about manufacturing, or a sanction against Apotex
20 for failing to prepare its witness for a 30(b)(6) deposition.

21 The argument we anticipate that the Plaintiffs would
22 make is that we should have done more to educate our witness
23 about what is in those documents, such as going to the
24 manufacturer and finding out what all those terms mean and how
25 they all fit together, and how the drug is manufactured,

1 because it is in your documents.

2 Again, I will submit that that is beyond the
3 obligation of a party witness for a 30(b)(6) deposition, which
4 is what the company knows, not what the company could learn.

5 And the third way that that deposition could go is
6 that the Plaintiffs could take this videotaped deposition of
7 our manufacturing witness to put on tape and embarrass that
8 witness, and derivatively embarrass the party for whom that
9 witness is sitting as the corporate representative, about the
10 fact that this witness knows nothing about manufacturing,
11 doesn't know the details of the manufacturing that the
12 manufacturing witness should know, right, and that is an
13 improper purpose for a 30(b)(6) deposition.

14 So, for all of those reasons, we think that putting a
15 witness up for an operation that the company does not do has a
16 significant potential for annoyance and embarrassment and would
17 certainly be an undue burden and expense for what we see is
18 suspect value to the case, your Honor. That is the Defendant's
19 position.

20 *THE COURT:* Thank you. I appreciate that, very
21 clearly and eloquently stated. Thank you, Mr. Henry.

22 Let me turn to Ms. Finken. Ms. Finken, your response.

23 *MS. FINKEN:* Thank you, your Honor. As your Honor is
24 aware, under PTO 60, the generic Defendants agreed to produce a
25 witness on those three topical areas. We have engaged in

1 multiple discussions over whether or not they could use
2 interrogatories to answer certain aspects of that manufacturing
3 deposition notice and then rely upon those interrogatories at
4 the deposition.

5 In relation to the specific issue for Apotex which Mr.
6 Henry is arguing for, they used their foreign affiliate to do
7 the manufacturing process for them. The foreign affiliate's
8 documents in terms of the manufacturing specifications and
9 processes and the information that would be -- that would be
10 informative for the manufacturing notice is contained in their
11 documents. It is contained in the documents that Apotex has
12 produced to the FDA. It is contained in the documents Apotex
13 has produced to the Plaintiffs in this litigation.

14 As your Honor is well aware, under the Federal rules,
15 the Defendants have a responsibility to produce a company
16 witness to testify about information that is within their
17 knowledge or is reasonably accessible to them, and they have a
18 duty to prepare those witnesses to testify on behalf of the
19 company and educate them to do so.

20 Given the agreements that have been entered into
21 between the parties in terms of PTO 60, and the manufacturing
22 notice topics that encompass not just the manufacturing
23 specifications and processes, but multiple other areas, it is
24 Plaintiffs' position that the Defendant should produce a
25 witness to testify as to those topics.

1 As your Honor had said previously, it is a very simple
2 deposition. If they don't know or they are unable to actually
3 answer questions on that, to get up there and say so, but that
4 is something that was agreed upon by the parties, and it is
5 consistent with the rules and it is consistent with some of the
6 guidance that your Honor has provided to us in prior PTO 32
7 dispute resolution hearings.

8 *THE COURT:* I guess, Ms. Finken -- I know Mr. Henry
9 sort of said it's not really a relevance question from his
10 perspective because he has the burden on him for a protective
11 order.

12 It does seem to me there is a relevance parameter that
13 needs to be addressed here, which is, if in fact -- and I
14 accept the representation -- company A does not manufacture,
15 they contract with company B to manufacture, and it can be an
16 affiliate or it can a third party, I would assume the analysis
17 is more or less the same, if they don't know anything about the
18 manufacturing process, and all they do is they get a box and it
19 has a bunch of pills in it, why should they be required to go
20 and educate themselves about that process? Because if they
21 don't know it, it can't have informed their behaviors.

22 As I understand it, the gravamen of the case you're
23 bringing at this time against the generics is, they should have
24 changed the expiration date -- we talked about this the other
25 day -- they should have changed the expiration date, they

1 should have warned the FDA, and they were negligent -- I forget
2 what the other one is. There is a negligent something count.
3 I don't have my notes in front of me.

4 *MS. FINKEN:* Negligent failure to test?

5 *THE COURT:* Thank you, that is the other one.

6 So, it would seem to me that if they know how their
7 supplier is manufacturing, that would, arguably, be relevant
8 because it would inform them, because they happen to know that
9 they are using API that could be contaminated, or they are
10 sourcing materials from a source that is not reliable, or they
11 are using solvents that increase -- all the things we talked
12 about the other day with the people who admitted that they
13 manufactured. But if you don't manufacture, it seems to me, at
14 best, what is relevant is, did they know that?

15 If they knew what their supplier was doing and how
16 their supplier was manufacturing that would at least be
17 arguably relevant to the claims you have, which is, armed with
18 that knowledge, they didn't do things they were supposed to do.

19 If they didn't have that knowledge during the relevant
20 time period, why are they required today to go and acquire that
21 knowledge which cannot have been relevant, or could not have
22 affected their decision-making during the relevant time period.
23 That is what I am struggling with.

24 *MS. FINKEN:* I understand, your Honor. I would submit
25 that they did have that knowledge then, they have it now. It

1 is required for them to know this when they submit their
2 information to the FDA. It is all within their own documents
3 that they have to own and submit to the FDA. They knew it
4 then, they knew the processes then, they know it now as well.

5 As it pertains to Apotex, Apotex Canada affiliate does
6 the manufacturing for them, it is essentially the same company.
7 It has the same CEO, it has the same officers, it has the same
8 people from Apotex Canada who is submitting documents on behalf
9 of Apotex in Florida to the FDA.

10 So, there is a lot of intermingling of those two
11 companies as it relates to the manufacturing processes, as it
12 relates to the marketing and selling within the U.S., and as it
13 relates to the submissions to the regulatory agencies,
14 specifically the FDA.

15 *THE COURT:* Let me engage on that. You have those
16 documents. The Apotex Canada documents have been produced?

17 *MS. FINKEN:* Yes.

18 *THE COURT:* So, presumably, if I require Mr. Henry to
19 produce a witness, you could show that witness speaking on
20 behalf of Apotex U.S. those documents, and the question would
21 be, was Apotex U.S. aware of these documents? They are not
22 your documents, they belong to somebody else, did you know
23 about them? And either the answer is yes or no. Either they
24 knew or they didn't know. That would be the first question.
25 That is the foundational question you would have to ask.

1 So, I get that, but assume the answer to that question
2 is no. No, we never saw it, I never read that email. Where do
3 we go?

4 *MS. FINKEN:* Well, your Honor, they are actually
5 Apotex U.S.'s documents that they obtain from Apotex Canada and
6 they submit to the FDA. There is no way that they could not
7 know about them. They actually got them, submitted them to the
8 regulatory agencies in the U.S.

9 So, the answer cannot be no, they have to be aware of
10 them. They actually submitted them to the FDA to support their
11 marketing of this product in the United States.

12 *THE COURT:* Okay. Help me walk through this. I am
13 trying to make sure I get all the boundaries and then I am
14 going to go back to Mr. Henry.

15 You show them the document, whether it's their
16 document or a third party document, they say, yeah, we knew
17 about that back in the relevant time period. Then you are
18 going to ask them, well, what did you do about it? Did you
19 ever notify your QC people? Did you ever notify your QA
20 people? That is going to be the line of questioning, correct?

21 *MS. FINKEN:* Presumably.

22 *THE COURT:* So, that would be what Mr. Henry would
23 have to prep his witness to be prepared for. I'm not limiting
24 you to that line of questioning, but a line of questioning akin
25 to that. What did you do? Not what did Apotex Canada do.

1 What did Apotex U.S. do once they had this information? That
2 is really the boundaries of where that goes, doesn't it?

3 *MS. FINKEN:* Yes, and it could be, if they truly don't
4 know, they can certainly say that for purposes of their answer
5 and we would move on.

6 I just want to be clear, your Honor, because Mr. Henry
7 did put this into his submission, that we have talked about the
8 fact that we would sit down, as we are required to do under the
9 rules, and have discussions with these generic manufacturers as
10 we move forward with the depositions to discuss specific scope
11 issues that are relative to their client as well.

12 Hopefully some of these items we would work out in
13 advance of the deposition on how we would proceed, but as a
14 whole, we think it is appropriate that they produce the witness
15 and that we go through the processes, as we would for any
16 30(b)(6) deposition, and discuss with them in advance of the
17 deposition, do a meet and confer, and to the extent that any
18 issues need to be narrowed, we would narrow them.

19 *THE COURT:* I appreciate that. I know I have said
20 this before, I know you have acknowledged it before, I will say
21 it again.

22 If really what it is going to end up being is they
23 just don't have anybody left who has any personal knowledge at
24 all, and all they are going to be doing, as Mr. Henry suggests,
25 is maybe just reading from the ANDA file, I would certainly --

1 if the parties couldn't reach an agreement or an accommodation
2 about -- I don't see a need to have a lengthy deposition to
3 just have somebody read a bunch of documents that they have
4 never seen before and simply had to read to get ready for the
5 deposition, and that have already been produced.

6 So, if the parties couldn't reach an accommodation on
7 that, any ruling I make today -- and I certainly haven't ruled
8 yet, but any ruling I make today would be without prejudice to
9 the Defendant saying, well, that is unduly burdensome on an
10 individual basis. Each individual Defendant could come in and
11 say, for us, we don't have anybody left with personal
12 knowledge, we manufactured this drug a hundred years ago, we
13 just don't have anybody.

14 That would be without prejudice to them invoking PTO
15 32 and perhaps I might order that the deposition doesn't take
16 place because it is simply cumulative and not proportional.

17 We are not there, I am not ruling on that today. I
18 just want the parties to be reminded that I consider that a
19 viable option that I would at least assume during your meet and
20 conferral you will discuss.

21 Let me go back to Mr. Henry. Mr. Henry, you have
22 heard my thoughts. I don't know that it's -- the manufacturing
23 process by your supplier, whether it is your sister entity or
24 an arm's length third party, I don't know that it is wholly
25 irrelevant and I don't know how expensive the burden is if it

1 is really limited to simply what did you know, and once you
2 knew that, what did you do with that information. That is kind
3 of the line I am looking at, but help me out. Give me your
4 response, please.

5 *MR. HENRY:* Sure. Maybe I could put it this way.
6 There are aspects of performing the regulatory function that
7 Apotex would have information about. So, lets take for example
8 adverse event reporting.

9 Apotex U.S. does the adverse event reporting to FDA
10 and it also has an adverse event function in the U.S. So, it
11 will have information on those issues as it relates even to the
12 ANDA and the documents that are in the ANDA, but what it
13 doesn't know are the manufacturing details because it doesn't
14 manufacture.

15 So, for example, if there is a change in Apotex Canada
16 to the manufacturing process, they want to move manufacturing
17 from Redman Hill to Apedacoke (phon), or whatever, that
18 application is, you know, prepared in Canada and because Apotex
19 U.S. is the regulatory function, Apotex U.S. files the
20 document. It doesn't mean it knows what the change was in the
21 manufacturing process, but yes, it does file the document with
22 the FDA.

23 I just want to make two comments on something
24 Ms. Finken said. One, a drug distributor in the U.S. like
25 Apotex U.S. doesn't have a legal obligation to know the details

1 of how the drug is manufactured, one. So, it doesn't have a
2 legal obligation to know the things that the Plaintiffs want to
3 ask a manufacturer.

4 The second thing I wanted to point out is Ms. Finken's
5 argument about alter ego. While I understand that that is
6 Plaintiffs' position as to Apotex U.S. and Apotex Canada, as
7 well as some of the other Defendants that have foreign
8 affiliates, PTO 60 at A(2) says the foreign affiliate will be
9 treated as a separate corporation for purposes of PTO 60. So
10 they are separate entities under PTO 60.

11 *THE COURT:* Let me tell you, for purposes of my
12 analysis today, I am considering them separate entities with
13 one caveat, which I have expressed many times to the parties.

14 If information is within the possession, custody and
15 control, and there is a robust body of case law as to what that
16 means, so if certain materials in the possession -- that Apotex
17 Canada has are, as a matter of law, within the possession,
18 custody and control of Apotex U.S., I am assuming those have
19 been produced and they are deemed to be known by Apotex U.S.

20 I am, for purposes of my analysis today, accepting
21 that there has been no proof that there is an alter ego or
22 piercing the corporate veil type situation. I am dealing with
23 what I consider an arm's length third party.

24 Let me circle back. I am sensing, and you can help me
25 with this, that there is some potential overlap here between

1 the manufacturing deposition and the PV deposition, because we
2 are talking about adverse event reporting and things like that.

3 Doesn't that blend into the pharmacovigilance, Ms.
4 Finken?

5 *MS. FINKEN:* There are two separate processes, but
6 both of them are both being reported to the FDA. So the
7 pharmacovigilance adverse events is under the pharmacovigilance
8 notice and they are all being reported to the FDA, as well as
9 the manufacturing processes and specifications and solvent use
10 and things like that are also being reported to the FDA as kind
11 of a different animal.

12 I wanted to remind your Honor as well that we also
13 have a claim against the generics for failure to warn the FDA.
14 What they did and did not tell the FDA in relation to testing,
15 specifications, manufacturing processes, adverse events, all of
16 these types of topics, is highly relevant to the claims that
17 are at issue in this case.

18 *THE COURT:* I meant -- I'm sorry, go ahead.

19 *MS. FINKEN:* No, that is okay, your Honor. I
20 apologize.

21 *THE COURT:* No, I cut you off. Go ahead.

22 *MS. FINKEN:* I was finished.

23 *THE COURT:* Okay. Here is my sense of it, and maybe,
24 Mr. Henry, this is the level of abstraction that I have to stay
25 at. I don't know yet.

1 Anything your clients didn't already know, they don't
2 have to go and learn as we sit here today. I find that to be
3 not relevant. If they didn't know it during the time period
4 alleged in this complaint, which ended -- I don't know when it
5 ended, whenever they took it off the market. Anything they
6 learned for the first time after that date or they don't know
7 as of today, they do not have to educate themselves on. Let's
8 start with that at one end of the spectrum.

9 To the extent they had actual knowledge of the
10 manufacturing processes that their supplier was using, or they
11 had knowledge of the ingredients, or they had a contract, for
12 example, with their supplier which gave them the right to
13 inspect the manufacturing process or to obtain information, I
14 would think that is all relevant to the claim.

15 Ms. Finken will make the argument, well, you had a
16 right under the contract to go and inspect the manufacturing
17 facility to see if they had rats on the floor and it was
18 115 degrees, and you never did, and that was negligent or
19 reckless, blah, blah, blah. It leads to one of their claims.

20 I start sort of with those broad parameters. I do
21 think there is some relevant evidence that a non-manufacturer
22 would still have and that could be discoverable relating to the
23 claims in this case.

24 I go back then to, is it proportional and what is the
25 burden once we sort of narrow the universe to that. I don't

1 know how much of what you were arguing to me I have now just
2 excluded, or how much I have trimmed or not trimmed.

3 *MR. HENRY:* So, we are talking specifically about
4 manufacturing the drug and knowledge about the manufacturing
5 process. Other than the words on the ANDA application and
6 supplements, Apotex U.S., and I would suspect the other
7 non-manufacturing generics, know only the words on the paper.

8 The other issue you raised about, for example, what is
9 the due diligence that a drug distributor in the United States
10 has about a drug supply, it is our view, and Ms. Finken can
11 correct me if I am wrong, that those issues are
12 actually storage and transportation (inaudible) -- how did you
13 get the drug, how did it come into the country, what did you do
14 to assure its purity, or whatever.

15 Those kind of due diligence questions I believe are
16 wrapped up in the storage and transportation, and we have one,
17 maybe two, storage and transportation witnesses that can
18 address those issues if it's within the company's knowledge.

19 *THE COURT:* Okay. Again, those lines may blur. I can
20 see where the lines among these three categories of depositions
21 could blur, and I will defer to the parties to figure out when
22 and who is the right witness.

23 Perhaps, after further discussion, if it really does
24 turn out that either Apotex or one of the other generic
25 Defendants tells Ms. Finken, look, you didn't give me what the

1 judge ordered us to do, which is to have a witness ready to
2 testify about what we knew back in the day, that is going to
3 take 15 minutes, Ms. Finken might agree to consolidate the
4 depositions.

5 I am going to leave it to the parties to do that on an
6 individualized basis. I am not going to order that they have
7 to agree to that. I think that is -- you all play very nicely
8 and I am sure working together and working with the special
9 master you will get over that hurdle.

10 Here is where I am right now, and this is going to be
11 my ruling for today.

12 My ruling for today is, I do believe, as I have said,
13 that there are certain manufacturing related -- there is
14 certain manufacturing related information that is relevant to
15 the claims and defenses in the case, and that if properly
16 noticed in the 30(b)(6) notice, the Defendants should be
17 preparing a witness to respond to, and that would exclude from
18 that, as I said previously, anything they don't already know
19 today. They are not required to learn anything they don't know
20 and they did not know during the time they manufactured.

21 But it does include what they did know about how the
22 product that they were selling was being manufactured.

23 You may be right, Mr. Henry, that once it left the
24 plant in India, China, Romania, wherever, that becomes storage
25 and transport, and I get that, and you and Ms. Finken can

1 negotiate the parameters there.

2 To the extent the question is, does the generic
3 Defendant, Apotex or some other generic Defendant, have -- did
4 they in real time have knowledge of how their supplier was
5 manufacturing this drug, either they did or they didn't. If
6 they did, I think that is fair game. If they didn't, they
7 didn't. They may have had a right to get it and they never
8 did. They may have had no right to get it. I think that is at
9 least fair game as a relevance question.

10 Now, I am not going to foreclose on an individual
11 basis Apotex or Dr. Reddy, or any of these other Defendants,
12 asserting on an individual basis based on their unique
13 circumstances that it would be otherwise disproportionate or
14 unduly burdensome to do what I just ordered. I am not ruling
15 on that question, I am leaving that as an open question.

16 As a cross-cutting matter, which is what I think we
17 are trying to deal with at this hearing, just the cross-cutting
18 question, I don't adopt the argument that simply because we
19 don't manufacture, we don't have to produce a manufacturing
20 witness. I have now hopefully clearly explained where I think
21 the lines are.

22 That will be my ruling, and that is without prejudice,
23 as I said, to Apotex or any other Defendant on an individual
24 basis arguing disproportionality or undue burden. That will be
25 my ruling as to that issue.

1 I hope that gives you some clarity and you can go
2 forth and negotiate and work with the special master on that.
3 Thank you both, that was very helpful and informative. I
4 really do appreciate it.

5 The last issue was the issue that Ms. Luhana was
6 getting to, but I will go back to Ms. Finken, and that is the
7 ESI issue. My understanding is, there has been -- at least
8 from my perspective, I have some ambiguity as to whether the
9 parties have actually agreed upon who is going to do TAR and
10 who is going to do search terms, and who has and who hasn't.
11 So, let me just start with that.

12 Ms. Finken, I am not asking you to argue it. I am not
13 going to make a ruling today, but just bring me up to speed on
14 the state of the world. Mr. Henry, if you want to go first,
15 that is fine, too.

16 *MS. FINKEN:* I am happy to go first. I think that
17 that's the problem, is we are trying to seek clarity here on
18 who is doing what, and that is the crux of the issue. We are
19 trying to seek clarity from the Defendants on what they have
20 chosen, and I think Ms. Luhana can address it in more granular
21 detail if you would like.

22 *THE COURT:* I don't, I don't need it to be addressed
23 in granular detail. I am going to delegate this issue to the
24 special master. I know Judge Rosenberg and I have told you
25 many times that when the special master speaks, she speaks with

1 our authority. On this one, I am explicitly telling you that
2 the special master this weekend speaks with my full authority
3 to convene the parties and she can ask those questions, the
4 individualized questions. Defendant one, what are you doing?
5 Defendant two, what are you doing? Defendant three, what are
6 you doing? And I expect and I order that they need to answer
7 those questions so that we can just get clarity.

8 I don't care what anybody chooses, we just need to
9 move this process forward, we need to have clarity on that.
10 That could be a five-minute conversation with the special
11 master or it could take you all weekend, but I am delegating
12 full authority to the special master to do that.

13 Mr. Henry, I am sorry, you wanted to speak and I kind
14 of ran over you, so let me hear from you.

15 *MR. HENRY:* Thank you, your Honor. My only comment
16 was that, in our view, the generic Defendants did make the
17 appropriate disclosures on Sunday, and have been willing to
18 have that conversation with Plaintiffs to bring any clarity to
19 it. I think all but one did select the search terms, and the
20 questions about the uncertainty are relatively narrow and can
21 be easily responded to.

22 *THE COURT:* All right. Thank you. I appreciate that.

23 Like I said, I am going to fully authorize the special
24 master to convene you and get the explicit answers. Maybe the
25 Defendants feel like the Plaintiffs aren't hearing them and

1 they have answered this question before, so answer it one more
2 time. Let's get it clear so everybody understands where we are
3 and we will go forward from there.

4 With that -- and I will wait to hear from the parties.

5 Ms. Finken or Mr. Henry, where do we go on the ESI
6 issue? Do I need to set another hearing? Is that something we
7 can reconvene on on a set date, or do you want to wait and talk
8 to each other and then get back to me?

9 Mr. Henry, let me have you go first on this, or Ms.
10 Luhana if you want to weigh in.

11 *MS. LUHANA:* What we have requested is that the
12 parties get back to us by the close of business tomorrow as to
13 whether they are choosing one option or the other option, and
14 if we are not able to come to an agreement, that the Court hear
15 us on Monday.

16 *THE COURT:* Mr. Henry, any thoughts?

17 *MR. HENRY:* Your Honor, I wasn't aware that there was
18 any dispute, and this is just a matter of communication that
19 the parties need to work out. So I will just leave it at that.

20 Maybe I need to be updated on where those discussions
21 are tomorrow to see what the next step is.

22 *THE COURT:* Sure.

23 *MR. HENRY:* Your honor, I just see this as a Defendant
24 to Defendant issue, I don't see the ESI issue being a
25 cross-cutting issue.

1 *MS. LUHANA:* Your Honor, there is a dispute issue
2 here. We need to hear from the generic Defendants whether they
3 intend to use TAR to cull the documents. If they intend to use
4 TAR we have to come up with a TAR protocol, and that is going
5 to take the parties significant time.

6 As your Honor has mentioned many times and why we are
7 here, there are depositions that are going to begin in April,
8 and then per the depo protocol, documents are due to us at
9 least 21 days before the deposition. We need to move forward
10 and decide what path they are going down. Are they going down
11 path A of the limited search terms we have narrowed and
12 refined, or are they going down path B, which is TAR for
13 culling, in which case we need to come up with a TAR protocol.

14 So, that's what we are seeking. We are seeking
15 clarity and guidance from these Defendants.

16 *THE COURT:* Here is what I am going to order. It is
17 1:30 today, this shouldn't take very long. By five o'clock
18 today, I want each of the generic manufacturers to in writing
19 inform the special master of the answer to that question,
20 whether you are going to use TAR or whether you are going to
21 use search terms.

22 The special master will collate that information,
23 provide it to all parties so that everybody knows what
24 everybody else is doing. At that point, if a TAR protocol
25 needs to be done, then the special master will embark on that.

1 So, by five o'clock today I am directing the
2 Defendants to answer the question Ms. Luhana just asked: Is it
3 TAR or no TAR, what are you doing?

4 *MS. LUHANA:* Thank you, your Honor.

5 *THE COURT:* Thank you all very much. I will leave the
6 ESI, and if there is an additional issue with the ESI or the
7 TAR protocol or anything else, the parties can invoke PTO 32 on
8 that.

9 Let me address one other issue if I can, and then I
10 will ask the parties if they have anything.

11 Mr. Henry and Mr. Yoo, Mr. Barnes, let me start with
12 this, I feel your pain. I can only imagine trying to cull and
13 coordinate 21, 22, 23 different lawyers on lots of different
14 issues. I understand being the generic liaison in this
15 particular litigation is a difficult job to be put in.

16 But I do have to say, over the couple of hearings we
17 have had, my impression is that there are -- some part of that
18 process seems to be falling apart, because I have hearings and
19 I have one person saying we are agreeing to this and somebody
20 else saying, well, I won't agree to that, or I thought we
21 agreed to that.

22 There seems to be a lack of communication both
23 internally within the generic manufacturers and externally
24 between the generic manufacturers and the Plaintiffs.

25 I am not casting blame on anybody, I realize it is a

1 difficult situation. I just want to point to a couple of
2 things that I hope everyone will take to heart.

3 PTO 33, which codifies the authorities and the duties
4 of the generic liaisons, includes the obligation, quote, "to
5 negotiate for and ultimately bind generic Defendants on
6 procedural issues and orders, subject to the right of any
7 Defendant to present objections based on individual or unique
8 circumstances first to the special master and then to the
9 Court," end quote.

10 So, the default should be that the liaisons step up,
11 make a decision, bind as many people as they can who are
12 agreeable to be bound, and anybody who wants to be an outlier
13 or opt out is free to opt out and they can go to see the
14 special master or they can go to see me, but it seems to me it
15 is no way to run a railroad -- and I don't know if this is what
16 is happening, but it seems to be what is happening.

17 It is no way to run a railroad if we are waiting
18 around to get unanimous consent from 21 or 22 or 23 people. At
19 some point, the liaisons on behalf of the generics have been
20 empowered by the Court to bind their constituents and they need
21 to do it and let the chips fall where they may.

22 Now, maybe we are past the point now, after I have
23 ruled on all this, of the cross-cutting global issues and I am
24 seeing an issue that is not an issue. Going forward, the
25 individual Defendants will come forward and invoke PTO 32 on

1 their individual issues.

2 Again, I am not casting blame on anyone, I recognize
3 it is a difficult situation, but I did want to emphasize that
4 is the Court's expectation, that at some point, we are not here
5 to get unanimous consent, the liaisons are empowered to make
6 decisions and are expected to make decisions.

7 That is all I had to say this afternoon. Ms. Finken,
8 anything else you wanted to raise or any issue you wanted to
9 address that I haven't ruled on?

10 *MS. FINKEN:* Thank you, your Honor. I am sorry, Tracy
11 Finken on behalf of Plaintiffs. I just have a housekeeping
12 procedural question that I wanted to ask.

13 You previously said that we should file the PTO 32
14 submissions on the docket. Would you like a proposed order
15 filed with those as well or is that something you will handle?

16 *THE COURT:* To the extent you want file some of the
17 submissions under seal, we will have to do a separate order.
18 We will prepare the order to seal. That's not a problem.

19 The others, you can just do a notice of filing, and
20 just file the submissions. You can do it jointly, file all of
21 them in one. The Plaintiffs can file theirs with all their
22 exhibits as exhibits, and the Defendants can file theirs with
23 all of their exhibits, or you can do one -- that is the best
24 way to do it, have the Plaintiffs file theirs with all their
25 exhibits, and the Defendants file theirs separately, just with

1 a notice of filing, no order necessary.

2 *MS. FINKEN:* Okay. Thank you.

3 *THE COURT:* Anything else, Ms. Finken, either any
4 objections that you haven't preserved or any issues I haven't
5 addressed that you wanted addressed, or any clarifications that
6 you want while I'm still here?

7 *MS. FINKEN:* No, your Honor, I think that your
8 directions were very clear. I'm sure that if we have any
9 questions, we will be back in front of your Honor in the
10 future.

11 *THE COURT:* I always look forward to seeing you, it is
12 informative for me. I am learning a lot about the drug
13 manufacturing process.

14 Mr. Henry, not waiving any objections you may have to
15 the rulings I have made, is there any issues you wanted to
16 raise or any clarifications that you wanted?

17 *MR. HENRY:* No, your Honor. Thank you very much for
18 your time this afternoon.

19 *THE COURT:* Thank you all. You made it in just under
20 an hour so I am very happy. Thank you, everyone, and have a
21 good afternoon.

22 *MS. FINKEN:* Thank you, your Honor.

23 *MR. HENRY:* Thank you, your Honor.

24 (Thereupon, the hearing concluded.)

25 * * *

1 I certify that the foregoing is a correct transcript
2 from the record of proceedings in the above matter.

3
4 Date: March 6, 2021

5 /s/ Pauline A. Stipes, Official Federal Reporter

6 Signature of Court Reporter
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Pauline A. Stipes, Official Federal Reporter

MR. HENRY: [24] 3/24 8/1 8/3 8/8 8/24 9/6 9/11 9/20 9/25 10/7 11/21 11/25 12/9 13/5 13/23 15/1 15/16 28/4 32/2 36/14 37/16 37/22 42/16 42/22	4th [1] 4/7	41/2
MS. FINKEN: [30] 3/1 3/8 3/22 5/24 8/12 8/15 8/19 10/11 10/14 10/19 10/24 11/10 11/14 12/17 14/17 20/22 23/3 23/23 24/16 25/3 25/20 26/2 30/4 30/18 30/21 35/15 41/9 42/1 42/6 42/21	5	against [3] 19/19 22/23 30/13
MS. LUHANA: [5] 6/3 7/13 37/10 37/25 39/3	54 [6] 5/16 7/11 8/21 9/5 9/24 11/20	agencies [2] 24/13 25/8
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